ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of BellSouth Corporation Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs	RM No.

PETITION FOR RULEMAKING

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EXECUTIVE SUMMARY

Over the past decade, the industry has spent billions of dollars to implement local number portability ("LNP"), as mandated by the Telecommunications Act of 1996 ("1996 Act"), and thousands-block number pooling as required by the Commission. The industry continues to fund on-going LNP and pooling activities that cost millions of dollars annually. Certain of these costs are associated with the administration of the databases used to facilitate LNP and pooling and are categorized by the Commission as shared industry costs. In response to the statutory mandate that all telecommunications carriers bear the costs of number administration and LNP on a "competitively neutral"[1] basis, the Commission devised a framework that allocated shared LNP and pooling costs incurred by the industry among providers based upon their end-user telecommunications revenues.

However, as demonstrated in this Petition, the current method of allocating shared industry costs based upon revenues is an outdated mechanism that no longer meets the statute's requirement of competitive neutrality and should be changed. The communications landscape has evolved dramatically since the Commission first adopted its LNP cost distribution and recovery rules in 1998. As a result, many of the assumptions and rationales used by the Commission to support the revenue-based allocation methodology are no longer valid. Accordingly, BellSouth requests that the Commission replace the current method of allocating shared industry costs for LNP and pooling among service providers based upon end-user telecommunications revenues with a usage-based mechanism. Under BellSouth's proposal, the shared industry costs incurred to operate and manage each regional database would be

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[1] 47 U.S.C. § 251(e)(2).

distributed among service providers based upon each provider's use of the particular database serving the provider's region.

Although the Commission considered a usage-based system at the beginning of LNP and declined to adopt it, the Commission did so out of an abundance of caution. By the Commission's own admission, there was absolutely no evidence in the record to show conclusively that usage-based charges would harm competition or impede a provider's ability to compete for subscribers. The agency simply believed that it was "prudent at this early stage in the deployment of number portability to minimize such risk."[2]

As this Petition demonstrates, the industry now is far removed from the "early stage" of LNP. In the past eight years, the industry and the Commission have gained extensive experience with both LNP and pooling. Moreover, competition continues to grow – the competitive local exchange carrier ("CLEC") industry has matured; the wireless market continues to expand; and new technologies are competing in the local services market (*e.g.,* Voice-over-Internet Protocol ("VoIP")). In addition, and perhaps most importantly, the current allocation mechanism no longer satisfies the competitive neutrality mandate in Section 251(e)(2) because it inequitably burdens certain carriers by requiring them to pay for costs that they do not cause.

Shared industry costs have risen significantly over the last few years due to increased porting and pooling activities, especially since the commencement of wireless LNP in 2003. Between 2001 and 2004, the total shared costs for the Southeast region rose from $4.8 million to $25.4 million – a five-fold increase. In 2004 alone, the total shared costs for the Southeast region ($25.4 million) doubled from the previous year.

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2 *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Third Report and Order*, 13 FCC Rcd 11701, 11745, ¶ 88 (1998) (emphasis added) ("*Third Report and Order*").

These escalating costs are due to an increase in the overall porting and pooling activities occurring within the industry. Notwithstanding this increased activity, the percentage of transactions generated solely by BellSouth has actually declined over the years. Nevertheless, BellSouth's payments to cover its portion of the shared industry costs are rising. For example, BellSouth's allocated share of the Southeast region's LNP and pooling costs more than quadrupled over a three-year period, rising from $1.4 million in 2001 to $6.1 million in 2004. The current system requires BellSouth to pay more than 20 percent of the shared LNP and pooling costs attributable to its region, even though it is responsible for generating only a very small percentage of the region's LNP and pooling charges. In other words, BellSouth is paying millions of dollars to facilitate other providers' porting and pooling activities. This outcome places a disproportionate burden upon BellSouth by requiring it to absorb costs for which it is neither responsible nor receives any benefit. To eliminate this disparity and achieve the competitive neutrality required by the 1996 Act, BellSouth urges the Commission to adopt a usage-based mechanism as proposed herein.

Under today's market conditions, a usage-based mechanism is the most "competitively neutral" method for distributing shared costs. Consistent with the Commission's two-part test for competitive neutrality, a usage-based mechanism: (1) will not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber; and (2) will not disparately affect the ability of competing service providers to earn a normal return.[3]

In addition to satisfying the standard for competitive neutrality, a usage-based mechanism offers a number of other advantages. A usage-based mechanism is not only consistent with the

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[3] *Id.* at 11731-32, ¶ 53.

long-standing principles of cost causation but it also will encourage efficient use of the regional databases. Next, a usage-based system is straightforward and easy to administer. Finally, all shared costs incurred by the industry will continue to be recovered. The costs will simply be distributed based upon an individual provider's use of the regional databases, instead of allocated based upon a provider's end-user telecommunications revenues.

In sum, the Commission has a statutory obligation to ensure that all LNP and pooling costs are borne by providers in a "competitively neutral" manner. The current mechanism of distributing costs based upon end-user revenue, though perhaps an appropriate mechanism at one point in time, no longer satisfies this mandate. Accordingly, the time has come for the Commission to adopt a new approach. This Petition is timely not only because of changes that have occurred in the marketplace since the Commission originally adopted its cost distribution rules, but also because the Commission is re-examining the propriety of revenue-based mechanisms in other contexts (*e.g.*, universal service contribution methodology).

BellSouth believes that a usage-based system that assesses each provider based upon its use of the regional databases is the best way to ensure that providers bear the costs of LNP and pooling in a "competitively neutral" manner. BellSouth therefore requests that the Commission initiate a rulemaking proceeding to replace the current method of allocating shared industry costs for LNP and pooling among service providers based upon end-user telecommunications revenues with a usage-based mechanism.

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PETITION FOR RULEMAKING

Pursuant to Section 1.401 of the Commission's rules, 47 C.F.R. § 1.401, BellSouth Corporation, on behalf of its wholly owned subsidiaries (collectively "BellSouth"), hereby petitions the Commission to initiate a rulemaking proceeding to change the methodology for distributing the shared costs of local number portability ("LNP") and thousands-block number pooling[4] among service providers as set forth in Section 52.32[5] of the Commission's rules and related Commission orders.[6] Specifically, BellSouth requests that the Commission replace the current method of allocating shared industry costs for LNP and pooling among service providers based upon end-user telecommunications revenues with a usage-based mechanism that requires carriers to pay for those LNP and pooling costs that they cause. This proposed change is

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[4] The terms "thousands-block number pooling," "number pooling," and "pooling" are used interchangeably throughout this Petition.

[5] 47 C.F.R. § 52.32.

[6] *See Third Report and Order* (telephone number portability costs); *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7667, 7668-69, ¶¶ 204, 207 (2000) (thousands-block number pooling costs).

necessary in order to ensure that the Commission satisfies the 1996 Act's mandate that providers bear the costs of number administration and LNP on a "competitively neutral" basis.[7] Under BellSouth's proposal, the shared industry costs incurred to operate and manage each regional database would be distributed based upon each provider's use of the particular database serving the provider's region.[8]

I. SUMMARY AND BACKGROUND

Over the past decade, the industry has spent billions of dollars not only to implement LNP and number pooling but also to fund on-going LNP and pooling activities. In response to the statutory mandate that all telecommunications carriers bear the costs of number administration and LNP on a "competitively neutral" basis, the Commission devised a framework that allocated certain LNP and pooling costs incurred by the industry among providers based on their end-user telecommunications revenues. This cost distribution methodology is the subject of the instant Petition. Changed market conditions, years of experience with LNP and number pooling, access to actual cost data, and asymmetric cost burdens all weigh strongly in favor of Commission action to modify the existing method of distributing shared LNP and pooling costs among providers.

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[7] 47 U.S.C. § 251(e)(2).

[8] The Commission makes a distinction between "cost distribution" and "cost allocation." The Commission defines "cost distribution" as "the division among carriers of responsibility to recover number portability costs." *Third Report and Order*, 13 FCC Rcd at 11717, n.100. "Cost allocation," on the other hand, is "one method of distributing number portability costs, through the use of some allocator such as share of telecommunications revenue." Another distribution method identified by the Commission is one that "make[s] carriers responsible for their own costs of providing number portability, *i.e.*, the costs that they themselves incur in the first instance." *Id.* BellSouth's use of the terms "cost distribution" and "cost allocation" throughout this Petition is consistent with the Commission's definitions.

BellSouth below provides a brief history of LNP and thousands-block number pooling, database administration, and the Commission's cost distribution and recovery framework. Sections II. And III. Demonstrate that competitive developments combined with the growth and success of LNP and thousands-block number pooling justify Commission consideration and adoption of a new methodology for distributing shared costs among service providers. Section IV. Sets forth the Commission's authority to establish a new cost distribution mechanism. Finally, in Section V, BellSouth demonstrates how the current system of allocating LNP and pooling costs based upon telecommunications revenues no longer satisfies the statute's competitive neutrality mandate and recommends replacing the existing mechanism with one that assesses each provider based upon its use of the regional databases.

A. LOCAL NUMBER PORTABILITY

The Communications Act of 1934, as amended by the 1996 Act, defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[9] Section 251(b)(2) of the 1996 Act requires all local exchange carriers ("LECs") "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[10]

On July 2, 1996, the Commission released its *First Report and Order* in the number portability docket. That order established rules and deployment schedules for the implementation of long-term number portability by LECs and certain broadband Commercial

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9 47 U.S.C. § 153(30).

10 47 U.S.C. § 251(b)(2).

Mobile Radio Service ("CMRS") providers.[11] Initially, the Commission required all wireline LECs to provide number portability in the 100 largest Metropolitan Statistical Areas according to a phased deployment schedule that commenced on October 1, 1997 and concluded December 31, 1998.[12] For wireless LNP, the Commission set an initial compliance date of June 30, 1999.[13] After multiple extensions, wireless LNP finally commenced on November 24, 2003.[14] Thus, wireline LNP has been in place for eight years, and wireless LNP will be celebrating its second anniversary in November 2005.

B. THOUSANDS-BLOCK NUMBER POOLING

In 2000, as part of the Commission's effort to promote the efficient use of numbering resources, the Commission adopted a thousands-block number pooling requirement.[15] Thousands-block number pooling is a conservation measure that involves breaking up the 10,000 numbers in an NXX central office code into ten blocks of 1,000 numbers and allocating each 1000-number block to a different provider within the same rate center. Both wireline and

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11 *Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) ("*First Report and Order*").

12 *Id.* at 8393, ¶ 77 & App. F; 47 C.F.R. § 52.23(b)(1).

13 *First Report and Order*, 11 FCC Rcd at 8440, ¶ 166.

14 *See Telephone Number Portability; Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); *Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability*, CC Docket No. 95-116, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); *Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation And Telephone Number Portability*, WT Docket No. 01-184; CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

15 *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7625, ¶ 122 (2000).

wireless carriers that are capable of providing LNP are required to participate in number pooling.[16]

Although the Commission adopted a staggered implementation schedule for nationwide pooling that commenced in March 2002,[17] a number of states had already initiated state pooling trials that commenced prior to the start of national pooling.[18] CMRS carriers, however, did not begin national pooling until November 24, 2002.[19] December 2003 marked the final phase of the national pooling rollout.

C. DATABASE ADMINISTRATION

Number portability and thousands-block number pooling are made possible through a nationwide system of regional databases. There are seven regional databases that correspond to

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[16] *Id.* at 7627, 7632-33, ¶¶ 125, 134. The Commission's rules require providers to donate thousands-blocks with less than ten percent contamination to the number pool so that these blocks can be reassigned to other providers. 47 C.F.R. § 52.20(c)(1).

[17] *The Common Carrier Bureau Announces the First Quarter Schedule for National Thousands-Block Number Pooling*, CC Docket No. 99-200, *Public Notice*, 17 FCC Rcd 103 (2001); *Numbering Resource Optimization*, CC Docket No. 99-200, *Order*, 17 FCC Rcd 7347 (2002).

[18] *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98 & 95-116, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, 258, ¶ 11 (2001) (Commission noted that 107 pools in 26 states had already begun.).

[19] *Numbering Resource Optimization; Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, CC Docket Nos. 99-200 & 96-98, *Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200*, 16 FCC Rcd 306, 329-30, ¶¶ 50-51 (2000); *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 99-200, 96-98 & 95-116, *Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200*, 17 FCC Rcd 252, 263, ¶ 23 (2001) (affirmed November 24, 2002 as commencement date for CMRS carriers to commence pooling).

each of the seven original Bell Operating Company territories.[20] Each regional database is administered by a neutral third party referred to as the local number portability administrator ("LNPA"). Today, NeuStar, Inc. ("NeuStar") is the LNPA for all of the regional databases.[21] NeuStar also serves as the national Pooling Administrator ("PA") and, as such, is responsible for administering thousands-block number pools by assigning, managing, forecasting, reporting and processing the data necessary to facilitate thousands-block number pooling.

NeuStar currently has an agreement with the North American Number Portability Management LCC ("NAPM LLC")[22] that was executed in 2003 and is set to expire in 2011. This contract governs the terms and conditions of the relationship between the NAPM LLC and NeuStar as the LNPA and sets forth the rates and fees for various services performed by NeuStar.

D. NUMBER PORTABILTY COSTS

The implementation of local number portability has imposed substantial costs upon the industry from its inception. Recognizing that these costs could adversely affect the development of competition, Congress adopted Section 251(e)(2) of the 1996 Act, which requires that "[t]he

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[20] The seven regions are: Western, West Coast, Mid-West, Southeast, Mid-Atlantic, Southwest, and Northeast.

[21] When long-term number portability commenced, there were two independent local number portability administrators (Lockheed Martin and Perot Systems). *Third Report and Order*, 13 FCC Rcd at 11709-10, ¶ 13.

[22] Service providers in the various regions had already formed seven regional LLCs prior to the adoption of the Commission's number portability requirements. The Commission accepted the recommendation of the North American Numbering Council ("NANC") to allow the existing LLCs to manage and oversee the LNPAs. *Telephone Number Portability*, CC Docket No. 95-116; RM 8535, *Second Report and Order*, 12 FCC Rcd 12281, 12284-85, 12296-97, ¶¶ 4, 21 (1997). In 1999, the original seven LLCs merged into one LLC known as the North American Number Number Portability Management LLC. The NAPM LLC maintains an identical contract with NeuStar for each of the seven regions.

costs of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[23] The Commission established a two-part test to assess "competitive neutrality" – a term that was not defined in the statute. Specifically, the Commission found that a "competitively neutral" mechanism: "(1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return."[24]

To satisfy the statute's competitive neutrality mandate, the Commission developed a comprehensive cost recovery and distribution framework for number portability. In its *Third Report and Order*, the Commission established three categories of costs incurred to implement number portability: (1) shared industry costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability.[25]

Shared industry costs are the subject of the instant Petition. These costs are defined as the "'costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability.'"[26] The Commission has further subcategorized these shared costs into:

(a) non-recurring costs, including the development and implementation of the hardware and software for the database;

(b) recurring (periodic) costs, such as rent, utilities, payroll, repair, and replacement that are incurred by the database administrators; and

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23 47 U.S.C. § 251(e)(2).

24 *Third Report and Order*, 13 FCC Rcd at 11731-32, ¶ 53.

25 *Id.* at 11738, ¶ 68.

26 *Id.* at 11738-39, ¶ 69.

(c) costs for uploading and downloading.[27]

Under the Commission's rules, the local number portability administrator (NeuStar) must recover the shared costs of number portability on a regional basis. Each telecommunications carrier providing telecommunications service in an area served by a regional database must contribute to the costs incurred to run and manage that particular database.[28] For example, BellSouth operates in the Southeast region and, as such, must contribute to the shared costs for database management and administration in the Southeast region.

Today, a carrier's share of regional database costs is based upon an allocation methodology developed by the Commission.[29] The allocator selected by the Commission is a carrier's proportion of total regional telecommunications revenues. Under the Commission's rules, the local number portability administrator is responsible for allocating the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[30]

E. THOUSANDS-BLOCK NUMBER POOLING COSTS

As with the implementation of LNP, providers have incurred significant costs to comply with the Commission's thousands-block number pooling requirement. Relying on its Section

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27 *Id.* at 11739, ¶ 70. The shared upload and download costs include only the costs that the database administrators incur to process uploads and downloads. The costs incurred by carriers to individually process uploads and downloads are carrier-specific costs directly related to providing number portability. *Id.*

28 47 C.F.R. § 52.32(a).

29 "Cost allocation" is defined as the "method of distributing number portability costs, through the use of some allocator." *Third Report and Order*, 13 FCC Rcd at 11717, n. 100.

30 47 C.F.R. § 52.32(a)(2); *Third Report and Order*, 13 FCC Rcd at 11754-55, ¶ 105. Once a carrier's portion of the shared industry costs is allocated, that share becomes a carrier-specific cost directly related to the provision of LNP. *Id.* at 11745, ¶ 87.

251(e)(2) authority and the conclusion that thousands-block number pooling is a numbering administration function, the Commission established a cost distribution and recovery framework for number pooling that mirrored the framework developed for LNP costs.[31] The Commission determined that "the costs resulting from the administration of thousands-block number pooling, specifically the costs incurred by the third party thousands-block number Pooling Administrator to build, operate, and administer the database for thousands-block number pooling are shared industry costs."[32] These shared costs are allocated among providers using the same formula established for LNP – each provider's contribution to cover the regional shared pooling costs is based upon that provider's proportion of total intrastate, interstate, and international end-user telecommunications revenues for the particular region.[33]

F. CALCULATION OF SHARED COSTS FOR NUMBER PORTABILITY AND POOLING

In reality the allocation process for LNP and pooling costs works as follows. As both the LNPA and PA, NeuStar calculates the total shared costs for each regional database based upon the total number of billable transactions generated in a particular region. A billable transaction is an LNP or pooling transaction that adds (inserts), deletes (disconnects), or modifies (updates) a record in the relevant regional database. A record contains information necessary to facilitate call routing for a telephone number that has been ported or pooled.

For example, when a customer switches from one provider to another, the provider that wins the customer will port the customer's telephone number from the former provider by

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31 *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7662-63, ¶¶ 193-94 (2000).

32 *Id.* at 7667, ¶ 204.

33 *Id.* at 7667-68, ¶¶ 206-07.

electronically transmitting (uploading) the new Location Routing Number ("LRN") to the Number Portability Administration Center ("NPAC"). This process pairs the customer's original telephone number with the LRN for the switch of the new provider thereby allowing the customer to retain the original telephone number. The LNPA then electronically broadcasts (downloads) LRN updates to providers' local service management systems so that providers may properly route calls.[34] Every billable transaction is accompanied by a broadcast message that is sent to all service providers in the relevant region to notify them that a record in the NPAC has been added, deleted, or modified.[35] These broadcast messages do not constitute billable transactions and therefore do not generate any transaction charges.

Pooling utilizes the same regional databases as LNP, and many of the same processes for uploading and downloading data occur. Records in the regional databases are added, deleted, or modified, and billable transactions are generated from pooling. For example, if a 1000-block of numbers is allocated to a provider for pooling purposes, 1000 billable transactions are generated.

Once NeuStar has calculated the total number of billable transactions for a region, it multiplies this figure by the transaction rate,[36] which is negotiated between NeuStar and the NAPM LLC. Assume that the number of billable transactions for a given month is one million, and the negotiated rate for a billable transaction is $1.00. The total shared costs to be allocated among service providers in a particular region therefore would be $1,000,000 (one million

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34 *Third Report and Order*, 13 FCC Rcd at 11710, ¶ 14.

35 The "deletion" of a record occurs, for example, when a customer disconnects a telephone number and that number is ported back to its home switch. A "modification" occurs when a service provider changes any information in an existing record in a regional database, such as the service provider identification or LRN.

36 The billable transaction rate in the Southeast region is currently $1.05 per transaction. This rate is down from $1.55 in 2001 and 2002, $1.50 in 2003, and $1.08 in 2004.

dollars). (1 million billable transactions X $1.00 = $1,000,000). Thus, if Carrier A's regional revenues comprise 10% of the total intrastate, interstate, and international telecommunications revenues for the region, Carrier A's portion of the $1,000,000 would be $100,000. (10% X $1,000,000).

II. CHANGED MARKET CONDITIONS AND YEARS OF LNP AND POOLING EXPERIENCE DICTATE CHANGING THE METHODOLOGY FOR DISTRIBUTING SHARED LNP AND POOLING COSTS.

Circumstances have changed dramatically since the Commission first established its cost distribution and recovery rules for long-term number portability in 1998. First, LNP is no longer in its infancy. Wireline customers have been enjoying the ability to port their telephone numbers for eight years. Further, the wireless industry is now a full participant in the porting of telephone numbers. In fact, in the first year after wireless LNP began in November 2003, the number of wireless customers porting their numbers to other providers outpaced the number of wireline customers porting their numbers.[37]

Similarly, thousands-block number pooling is an established number optimization measure that has been in use now for more than five years in some areas of the nation. ILECs, CLECs, and CMRS providers are all participating in pooling. According to the Commission, if whole NXXs had been assigned to providers instead of individual thousands blocks, utilization

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[37] *FCC Releases Telephone Numbering Resource Utilization Report*, FCC News Release at 2 (Aug. 8, 2005) ("Since wireless number portability began on November 24, 2003, wireless customers have moved more than 11 million telephone numbers to new carriers. During the same time, wireline customers moved more than 7 million telephone numbers to new carriers."). Figures are derived from the report on Numbering Resource Utilization in the United States as of December 31, 2004, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, August 2005, at 34, Table 14 ("Numbering Resource Utilization Report").

within those blocks would have been 12.9%.[38] However, because of pooling, utilization was 49.7%.

Second, the competitive landscape has changed significantly. CLECs that were just entering the market after the passage of the 1996 Act have matured and are now full-fledged competitors offering a variety of products and services.[39] In addition, the growth trend in the wireless industry continues at a dramatic rate. For example, the number of wireless telephone subscribers more than doubled to 181 million between 1999 and 2004.[40] In comparison, the number of landline subscribers declined approximately six percent over this same time period.[41] Providers of Internet Protocol ("IP")-based services also have established themselves in the marketplace as viable competitors to traditional landline service.[42]

The evolution described above has led the Commission recently to revisit some of its previous conclusions and rules regarding numbering and to provide relief. Earlier this year, the Commission granted a waiver of certain of its numbering rules to allow a provider of IP-enabled services to obtain telephone numbers directly from the North American Numbering Plan

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38 Numbering Resource Utilization Report at 8, 27, Table 9.

39 According to the Commission's most recent Local Competition Report, the CLEC share of end-user switched access lines has climbed from 4.3% in 1999 to 18.5 % in 2004. *Local Telephone Competition: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 1 (July 2005) ("Local Competition Report").

40 Local Competition Report, Table 13.

41 Local Competition Report, Table 1.

42 The number of consumers subscribing to VoIP service has been forecast to grow from 1.1 million in 2004 to 28.5 million by 2009. Kate Griffin, Yankee Group, *Consumer Market for US Residential VoIP Services Accelerates,* June 28, 2005, at 1. The Commission has acknowledged that consumers of VoIP service expect it to function as a "regular telephone" service, which means that it increasingly competes with traditional telephone services. *See generally IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers,* WC Docket Nos. 04-36 & 05-196, *First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 10245 (2005).

Administrator ("NANPA") and/or Pooling Administrator.[43] Under the Commission's existing rules, absent a waiver, only state certified carriers are eligible to receive numbers directly from the NANPA or PA.[44] The Commission concluded that granting the waiver would serve the public interest because it would allow IP-enabled providers to deploy innovative new services to the public in a rapid manner.[45]

Recognizing that the proliferation of IP-enabled services raises additional issues and questions regarding access to numbering resources and the applicability of the Commission's existing numbering rules, the Commission requested that the North American Numbering Council ("NANC") examine whether and how the Commission might modify its numbering requirements to allow IP-enabled service providers access to numbering resources in a manner consistent with its optimization policies.[46] In response, the Future of Numbering Working Group submitted a report to the Commission entitled "VoIP Service Providers Access Requirements for NANP Resource Assignments."[47] One of the recommendations in this report is for the Commission to adopt the principle that all providers should share and bear the same "numbering-related" responsibilities.[48] These responsibilities would include, among other things, requiring

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43 *Administration of the North American Numbering Plan*, CC Docket No. 99-200, *Order*, 20 FCC Rcd 2957 (2005) ("*SBCIS Waiver Order*"). A number of "me too" waiver petitions are currently pending before the Commission.

44 *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7615, ¶ 97.

45 *SBCIS Waiver Order*, 20 FCC Rcd at 2959, ¶ 4.

46 *Id.* at 2963, ¶ 11.

47 VoIP Service Providers Access Requirements for NANP Resource Assignments, NANC Report and Recommendation by the Future of Numbering Working Group (July 15, 2005).

48 *Id.* at 3.

VoIP providers to port telephone numbers upon request and to pay a portion of the shared LNP and pooling costs incurred by the industry.[49]

Clearly, providers are operating in a different environment than when the LNP cost distribution rules were adopted almost eight years ago. In light of the market changes described above, the time has come for the Commission to re-examine its rules regarding the distribution of shared LNP and pooling costs. The rules are no longer appropriate in light of the realities of the competitive marketplace today and should be changed. Moreover, this Petition is timely because the Commission is re-evaluating the propriety of using revenue-based mechanisms in other contexts (*e.g.*, universal service contribution methodology).[50]

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[49] Requiring VoIP providers to contribute to shared LNP and pooling costs would likely require a change in the Commission's rules. For example, current Section 52.32 requires "telecommunications carriers" to pay shared LNP costs. Given that the Commission has not yet determined the regulatory classification of VoIP providers, it is unclear whether VoIP providers would be required to contribute to the shared costs of LNP or pooling under the existing rules. The Commission has full authority to subject VoIP providers to its cost distribution and recovery rules. Although Section 251(e)(2) requires "telecommunications carriers" to bear the costs of number administration and LNP, the Commission is not precluded from requiring VoIP providers to contribute to the shared costs of LNP and pooling. The Commission can rely on its exclusive jurisdiction over numbering to impose such an obligation upon VoIP providers. *See* 47 U.S.C. 251(e)(1). Indeed, the legislative history indicates a Congressional intent to require a broader segment of providers to bear the costs of number administration and LNP than just "telecommunications carriers." The Conference report states that "[t]he costs for numbering administration and number portability shall be borne by ***all providers*** on a competitively neutral basis." S. Conf. Rep. No. 104-230, at 122 (1996) (emphasis added).

[50] *See Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al.*, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002); *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45, *et al.*, *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752 (2002).

III. THE ASSUMPTIONS AND RATIONALES SUPPORTING THE COMMISSION'S ADOPTION OF A DISTRIBUTION METHOD THAT ALLOCATES SHARED LNP AND POOLING COSTS BASED UPON END-USER TELECOMMUNICATIONS REVENUES ARE NO LONGER VALID IN TODAY'S ENVIRONMENT.

As demonstrated above, the competitive developments and technological advances that have occurred since the Commission adopted its cost distribution and recovery rules almost eight years ago are significant. These changed circumstances justify the Commission revisiting its decision to adopt a revenue-based allocation methodology for shared LNP and pooling costs. As set forth more fully below, the assumptions and conclusions used by the Commission to support its decision are no longer valid in today's environment. Consequently, the current cost distribution mechanism is no longer "competitively neutral" as required by law.

The Commission has defined the competitive neutrality requirement of Section 251(e)(2) to mean that the cost of number portability and pooling borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace.[51] The Commission has established a two-part test to determine whether a mechanism is "competitively neutral." Under this test, a "competitively neutral" mechanism: "(1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return."[52]

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51 *Third Report and Order*, 13 FCC Rcd at 11731, ¶ 52; *see also id.* at 11732, ¶ 56; *Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7664-65, ¶¶ 198-99.

52 *Third Report and Order*, 13 FCC Rcd at 11731-32, ¶ 53. The Commission's definition of "competitive neutrality" and the related two-part test that were adopted in the context of long-term number portability costs are the exact same definition and test established by the Commission for distributing the shared costs incurred by the industry to implement interim number portability. *Id.*, ¶¶ 52-53; *see also Numbering Resource Optimization*, CC Docket No.

A. Cost Distribution – Allocation vs. Usage-Based

Applying its two-pronged test, the Commission previously concluded that allocating shared LNP costs among providers based upon revenues was preferable to distributing costs based upon a particular provider's use of the LNP databases. The Commission acknowledged that its rejection of a usage-based mechanism was a significant departure from its usual application of the principles of cost causation when evaluating the costs and rates of telecommunications services.[53] The Commission articulated the following reasons for selecting a revenue-based allocation methodology over a usage-based mechanism:

1. "Distributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads. At the outset of number portability, these carriers are more likely to be competitive LECs. Consequently, usage-sensitive distribution of the shared costs could 'give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber,' as well as 'disparately affect the ability of competing service providers to earn a normal return."[54]

2. "[A]ssessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently. . . . [U]nless carriers download data, they will be unable to terminate traffic to the appropriate end-user; unless carriers upload ported numbers to the databases, the databases will be inaccurate, making downloads useless for current and future database participants alike."[55]

BellSouth submits that the Commission's reasons for previously rejecting a usage-based cost distribution mechanism are no longer valid today and warrant re-examination. BellSouth considers each of the Commission's previously voiced concerns below.

99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7664-65, ¶ 199.

53 *Third Report and Order*, 13 FCC Rcd at 11726-27, ¶ 41.

54 *Id.* at 11745, ¶ 88 (emphasis added).

55 *Id.*, ¶ 89.

First, the Commission declined to adopt a usage-based distribution mechanism because it was concerned that assessing a provider based upon its use of the database might hinder the ability of CLECs to compete. Under the Commission's theory, CLECs would incur more port charges because they would be winning customers away from the incumbent LECs ("ILECs").[56]

CLECs, however, are no longer "new entrants." They are solidly established, as evidenced by their share of the local exchange market.[57] Since wireline LNP commenced in 1997, more than 32 million wireline ports have occurred, and today, carriers porting numbers are more likely to be wireless carriers.[58] Although CLECs certainly benefited from the revenue-based methodology in the early stages of LNP, they no longer need the economic protection provided by this allocation mechanism.

It is also important to note that, in 1998, when the Commission elected not to adopt a usage-based mechanism based on its potential effect on CLECs, the Commission acknowledged that there was absolutely no evidence in the record to show conclusively that usage-based charges would hamper a provider's ability to compete for subscribers.[59] The agency simply believed that it was "prudent at this early stage in the deployment of number portability to minimize such risk."[60]

Again, the industry is far removed from the "early stage" of LNP. Unlike eight years ago, the industry and the Commission have extensive experience with both LNP and pooling. Moreover, there is no longer a need to spread costs among providers based upon revenues in

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56 *Id.*, ¶ 88.

57 *See supra* note 39.

58 Numbering Resource Utilization Report at 34, Table 14.

59 *Third Report and Order*, 13 FCC Rcd at 11745, ¶ 88.

60 *Id.* (emphasis added).

today's competitive marketplace where customers have the freedom to port their numbers to and from wireline and wireless providers and are doing just that. Finally, in contrast to the lack of evidence that a usage-based system would harm CLECs when the Commission first adopted its cost distribution rules, strong evidence exists today showing that the current allocation methodology creates a significant disparity in the cost burdens imposed upon other non-CLEC providers such as BellSouth.

The second reason that the Commission declined to adopt a usage-based mechanism in 1998 was its concern that carriers would not download broadcast messages in order to avoid incurring charges.[61] As described above in Section I.C., when a customer switches from one provider to another, the provider that wins the customer will port the customer's telephone number from the former provider by electronically transmitting (uploading) the LRN to the NPAC. The LNPA then electronically transmits (downloads) LRN updates to providers' local service management systems so that providers may properly route calls.[62] These download messages are also known as "broadcast messages." Every billable transaction is accompanied by a "broadcast message" that is sent to all service providers in the source region to notify them that a record in the NPAC has been added, deleted, or modified. Broadcast messages (or downloads), however, do not constitute billable transactions. Thus, the Commission's prior concern about carriers choosing not to download data in order to avoid incurring billable transaction costs is misplaced and does not reflect today's reality.

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61 *Id.*, ¶ 89.

62 *Id.* at 11710, ¶ 14.

B. The Allocator

Once the Commission determined that an allocation methodology was preferable to a usage-based distribution mechanism, it next selected an allocator – a carrier's share of end-user intrastate, interstate, and international telecommunications revenue for the relevant region. Although the Commission ultimately adopted an end-user revenue allocation methodology, it nevertheless acknowledged the existence of alternative distribution methods, including one that would "make carriers responsible for their own costs of providing number portability, *i.e.*, the costs they themselves incur in the first instance."[63]

In adopting the end-user revenue allocator, the Commission found that this methodology would "not give one service provider an appreciable, incremental cost advantage when competing for a subscriber."[64] The Commission further determined that "allocating shared costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return.[65] The Commission explained that:

> Because carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only increase as it increases its revenue stream.[66]

The Commission's predictions about its revenue allocation methodology missed the mark. Although BellSouth's telecommunications revenues for the Southeast region have

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63 *Id.* at 11717, n. 100; *see also Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7664-65, ¶ 199.

64 *Third Report and Order*, 13 FCC Rcd at 11755, ¶ 106.

65 *Id.* at 11755-56, ¶ 107; *see also Numbering Resource Optimization*, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 7664-65, ¶ 199.

66 *Third Report and Order*, 13 FCC Rcd at 11755-56, ¶ 107.